

REMARKS

Claims 1-3, 5-7, 9-11 and 13-19 are pending in the present application. The Examiner rejected the pending claims under 35 U.S.C. § 102(b) as being anticipated by Wiser et al. (U.S. Patent No. 6,385,596) in a non-final Office Action dated February 12, 2008.

Applicants note that pages 9-26 of the Office Action are not applicable to the present application as confirmed by the Examiner. In pages 1-8 of the Office Action, the Examiner maintains his rejection of the pending claims based on Wiser.

Applicants respectfully submit that there at least four separate reasons why the present claims are patentable over Wiser. Applicants have set forth each of the four reasons in detail below with respect to claim 1. Applicants respectfully request that Examiner reconsider his rejection of the claims based on Wiser.

1. Wises Does Not Disclose Performance Data Commonly Used For Preview And Purchase

Claim 1 of the present application is directed to a song data reproduction apparatus that receives song data from a server. The song data is composed of performance data and order information. The performance data represents the content of the music performance and contains reproduction limiting information for limiting a reproduction state of the content of the music performance. The order information indicates either of a purchase or a preview associated to a usage right of the content of the music performance. It is important to emphasize that the song data is stored in the apparatus and that the performance data of the song data is used for both previewing and purchasing. If the order information of the song data is for preview, the reproduction limiting information is read to limit reproduction of the performance data to a portion. If the order information is for purchase, the performance data is read in full.

Claim 1 recites “a reproduction control section that specifies a portion of the performance according to the read reproduction limiting information when the identified usage right indicates the preview, then reproduces only the specified portion of the performance data, and does not reproduce

other portions of the content of the performance data than the specified portion, the reproduction control section reproducing all of the performance data when the identified usage right indicates the purchase”

Wiser does not disclose the above recitations as it does not disclose stored performance data being commonly used for both preview and purchase. Wiser prepares different media data files 200 or different audio images in a media file for preview and purchase. (*See, e.g.*, Col. 7, lines 4-16; Fig. 7B at 728 (streaming file for preview at 728); Fig. 9BA (streaming file for purchase at 960).) For example, the file for preview uses audio contents having a different length than audio contents used in the file for purchase. (*See, e.g.*, Col. 3, lines 54-63.) That is, the file for preview contains only a part of the music piece, while the file for purchase contains all of the music piece. Thus, Wiser does not disclose that the stored performance data of a music piece is commonly used for preview and purchase. Rather, different files or images are used for preview and purchase.

At item 4-J of the Office Action, the Examiner states that Wiser discloses the contents common to preview and purchase and cites Col. 11, lines 39-44 and Figs. 8 and 14 of Wiser. However, the citations merely disclose the ability to preview or purchase a song. It does not disclose that the performance data received and stored is commonly used for both preview and purchase. Quite the contrary, the citations make clear the server in Wiser streams for real time reproduction. This means that different versions (*e.g.*, different lengths) are delivered and stored for preview and purchase at the client terminal. It does not disclose the storage of one version of the performance data at the client terminal that is reproduced for both purchase and preview based on order information.

2. Wiser Does Not Disclose The Recited Determining Section

Claim 1 recites “a determining section that determines whether the song data has already been stored in the storage section.” This recitation is also not disclosed by Wiser. At item 4-C of the Office Action, the Examiner states that claim 8 of Wiser corresponds to the determining section of claim 1. The determining section of claim 1 determines whether the song data has been already

stored in the storage section of the apparatus. On the other hand, claim 8 of Wiser sets forth a method for distributing media data files including audio data to purchasers (client terminals) via a public communications network. In Wiser, a plurality of media data files are previously stored in the server. Each media data file has a media ID for identifying the media data file. Upon receiving a request to purchase a selected one of the media data files, the server generates a voucher ID associated with the purchase of the selected media data file, and transmits the voucher ID to a media player (client terminal). The server receives a data packet containing an authenticated voucher ID. The server successfully verifies the authenticated voucher ID, encrypts the selected media data file for delivery and transmits the selected media data file to the client terminal.

Thus, the determining section of claim 1 sets forth the process performed in the player side (client terminal), whereas claim 8 of Wiser sets forth the process performed in the server. Claim 8 specifically sets forth the verifying of authenticated voucher ID. However, the process of verifying the authenticated voucher ID is completely different from the process of determining whether the song data has been already stored in the storage of the client terminal.

3. Wiser Does Not Disclose The Recited Writing Section

A third reason for the patentability of claim 1 over Wiser is that Wiser fails to disclose the recited writing section. Claim 1 recites “a writing section that rewrites the order information contained in the stored song data to the order information contained in the received song data when the determining section determines that the song data has been already stored and that writes the received song data into the storage section when the determining section determines the song data is not stored in the storage section.” Such a writing section is unnecessary for Wiser, because Wiser prepares a media data file or image for preview separately from the media data file or image for purchase. There is no need to rewrite the order information as Wiser does not use performance data commonly for preview and purchase.

At item 4-D of the Office Action, the Examiner states that Wiser discloses the writing section of claim 1 and cites Col. 17, lines 36-39 of Wiser. However, the citation merely discloses

that the content manager 112 updates the transaction database 130 to include a new entry with the data from the voucher packet. This data will be used subsequently to authenticate a download request from the media player 116 against a validated purchase. The process of the writing section is performed in the client terminal, whereas the cited process is performed in the server. There is no disclosure or suggestion in the citation that different writing processes are performed at the client terminal in the case where the song data is already stored and in the case where the song data is not stored.

4. Wiser Does Not Disclose The Recited Writing Section

Claim 1 further recites “wherein the reproduction control section reproduces all of the performance data without reading the reproduction limiting information when the writing section rewrites the order information indicating the preview to the order information indicating the purchase.” Once again, this is unnecessary for Wiser, because Wiser prepares a media data file or image for preview separately from the media data file or image for purchase. Nor does it appear that the Examiner has cited to any section of Wiser that discloses this recitation in the Office Action.

Applicants respectfully submit that each of the above four reasons are sufficient for rendering claim 1 patentable over Wiser. Accordingly, Applicants respectfully request that the Examiner reconsider his rejection of claim 1 based on Wiser.

Claims 5, 9 and 19 are not anticipated by Wiser for at least the reasons set forth above. Claims dependent on claims 1, 5, and 9 are likewise not anticipated by Wiser for at least the reasons set forth above for the independent claims.

Claim 13 is directed to a server apparatus connectable to a song data reproduction apparatus. Claim 13 recites that the server apparatus has a creating section that creates data for a preview or purchase request “wherein the same performance data is commonly used for both the data of the song containing the order information indicating the preview and the data of the song containing the order information indicating the purchase.” Wiser does not disclose this recitation because, as discussed above, it discloses the use of two versions of the song.

Accordingly, Applicants respectfully submit that claim 13 is not anticipated by Wiser. Applicants also respectfully submit that claim 15, which depends from claim 13, is not anticipated by Wiser for at least these reasons.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, for any reason, the Examiner finds the application other than in condition for allowance, Applicants request that the Examiner contact the undersigned attorney at the Los Angeles telephone number (213) 892-5630 to discuss the steps necessary to place the application in condition for allowance.

In the unlikely event that the transmittal letter is separated from this document and the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. 393032043200. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: August 12, 2008

Respectfully submitted,

By /MehranArjomand/
Mehran Arjomand
Registration No.: 48,231
MORRISON & FOERSTER LLP
555 West Fifth Street
Los Angeles, California 90013-1024
(213) 892-5630